

Title 25. HEALTH SERVICES
Part 1. DEPARTMENT OF STATE HEALTH SERVICES
Chapter 141. Massage Therapists
Subchapter A. The Department
Amendment §141.2

Proposed Preamble

The Executive Commissioner of the Health and Human Services Commission on behalf of the Department of State Health Services (department) proposes an amendment to §141.2, concerning Massage Therapists fees.

BACKGROUND AND PURPOSE

The Texas Legislature passed the General Appropriations Act, Senate Bill 1, 79th Legislature, Regular Session (2005). Article II, Rider 85 makes a portion of the appropriation contingent upon collection of fees above the Comptroller of Public Accounts' Biennial Revenue estimate. To meet these requirements, a cost recovery fee is included in this amendment.

The Massage Therapy Registration Program was evaluated to determine the level of increase in fees based on the following criteria: the date of the last fee increase for the specific program area; and the cost of licenses compared to other similar licenses. Additional costs of administration and enforcement of the program, due to a recent legislative increase in pay, longevity pay, and travel reimbursement, were also factored in to determine the direct and indirect costs of each program.

SECTION-BY-SECTION SUMMARY

Amendments to §141.2 contain increases in fees assessed against licensed massage therapists for renewal registrations. Specifically, §141.2(c)(7) increases the fee for a one-year renewal by \$10; and §141.2(c)(8) increases the fee for a two-year renewal by \$20.

FISCAL NOTE

Kathy Perkins, Manager, Health Care Quality Section, has determined that for each fiscal year of the first five years the section is in effect, there will be fiscal implications to the state as a result of enforcing or administering the section as proposed. The effect on state government will be an increase in revenue to the state of \$126,640 in 2006 and \$190,000 in 2007 through 2010. These additional revenues will offset costs associated with the increased costs associated with the legislative increase in pay, longevity pay, and travel reimbursement. Implementation of the proposed section will not result in any fiscal implications for local governments.

SMALL AND MICRO-BUSINESS IMPACT ANALYSIS

Ms. Perkins has also determined that there are anticipated economic costs to small businesses or micro-businesses required to comply with the section as proposed. There will be an increase in the licensing fees for businesses which pay licensing fees for their employees or persons required to maintain a massage therapist license. The probable economic cost to persons required to comply with the fee for the license will increase from \$40 per year to \$100 every two years. There is no anticipated negative impact on local employment.

PUBLIC BENEFIT

In addition, Ms. Perkins has also determined that for each year of the first five years the section is in effect, the public will benefit from adoption of the section. The public benefit anticipated as a result of enforcing or administering the section is to generate funding to operate the program to ensure public health and safety through the licensing and regulation of massage therapists.

REGULATORY ANALYSIS

The department has determined that this proposal is not a "major environmental rule" as defined by Government Code, §2001.0225. "Major environmental rule" is defined to mean a rule the specific intent of which is to protect the environment or reduce risk to human health from environmental exposure and that may adversely affect, in a material way, the economy, a sector of the economy, productivity, competition, jobs, the environment or the public health and safety of a state or a sector of the state. This proposal is not specially intended to protect the environment or reduce risks to human health from environmental exposure.

TAKINGS IMPACT ASSESSMENT

The department has determined that the proposed amendment does not restrict or limit an owner's right to his or her property that would otherwise exist in the absence of government action and, therefore, does not constitute a taking under Government Code, §2007.043.

PUBLIC COMMENT

Comments on the proposal may be submitted to Heather Muehr, Professional Licensing and Certification Unit, Division for Regulatory Services, Department of State Health Services, 1100 West 49th Street, Austin, Texas 78756, 512/834-6628 or by email to heather.muehr@dshs.state.tx.us. Comments will be accepted for 30 days following publication of the proposal in the Texas Register.

STATUTORY AUTHORITY

The proposed amendment to §141.2 is authorized by Health and Safety Code, §12.0111, which requires the department to charge fees for issuing or renewing a license; and Government Code, §531.0055, and Health and Safety Code, §1001.075, which authorize the Executive Commissioner of the Health and Human Services Commission to adopt rules and policies necessary for the operation and provision of health and human services by the department and

for the administration of Chapter 1001, Health and Safety Code.

The proposed amendment affects the Occupations Code, Chapter 455, Health and Safety Code, Chapter 1001; and Government Code, Chapter 531.

LEGAL CERTIFICATION

The Department of State Health Services General Counsel, Cathy Campbell, certifies that the proposed rule has been reviewed by legal counsel and found to be within the state agencies' authority to adopt.

Legend: (Proposed Amendment(s))

Single Underline = Proposed new language

[Bold Print, and Brackets] = Current language proposed for deletion

Regular Print = Current language

(No change.) = No changes are being considered for the designated subdivision

§141.2 Fees.

(a) - (b) (No change.)

(c) The fees related to the registration of massage therapists are as follows:

(1) - (6) (No change.)

(7) fee for a renewal registration issued for a one-year period--\$50 [**\$40**];

(8) fee for a renewal registration issued for a two-year period--\$100 [**\$80**];

(9) (No change.)

(d) - (j) (No change.)